



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0895]

RIN 1625-AA00

Safety Zone; Temporary Change to Date and Location for Recurring Pittsburgh Steelers

Fireworks Display within the Eighth Coast Guard District, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is temporarily changing the enforcement period and location for a recurring fireworks display within the Eighth Coast Guard District. This regulation applies to only one recurring fireworks display event that takes place in Pittsburgh, PA. This action is intended to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display.

**DATES:** In § 165.801, the first table to § 165.801, entry 67 is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through February 28, 2017. In § 165.801, the first table to § 165.801, entry 59 is suspended from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through February 28, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0895 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412-221-0807, e-mail Jennifer.L.Haggins@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because fireworks displays on or over the navigable waterway poses safety concerns for waterway users. In this case, the Coast Guard published an NPRM entitled, “Sector Ohio Valley Annual and Recurring Safety Zones Update” in which it proposed to amend and update its safety zones listed in 33 CFR 165.801, the first table to § 165.801 relating to recurring fireworks shows and other events within the Coast Guard Sector Ohio Valley area of responsibility. The NPRM published on March 7, 2016 (81 FR 11706), and no comments were received. A final rule was published, entitled, “Sector Ohio Valley

Annual and Recurring Safety Zones Update” on June 14, 2016 finalizing the recurring safety zones listed in 33 CFR 165.801, the first table to § 165.801 (81 FR 38595).

On August 25, 2016, the Coast Guard discovered the safety zone listed in 33 CFR 165.801, the first table to § 165.801, entry 59 for the Pittsburgh Steelers Fireworks, Pittsburgh, PA has been changed to extend through February 2017, instead of January 2017, and the location has been changed from Ohio River, Mile 0.3-Allegheny River, Mile 0.2 to Allegheny River mile 0.0-0.25, Ohio River mile 0.0-0.3 and Monongahela River mile 0.0-0.1.

After receiving and fully reviewing the event information, circumstances, and exact location, the Coast Guard determined that it is impracticable to publish an NPRM for the date and location changes because we must establish this safety zone on the date of publication of this rule.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule is contrary to the public interest as immediate action is necessary to prevent possible loss of life and property during the hazards created by a barge-based fireworks display near and over the navigable waterway.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Pittsburgh (COTP) has determined that a safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display. For the 2016-2017 Pittsburgh Steelers football

season, the Coast Guard will temporarily suspend the regulation listed in 33 CFR 165.801, the first table to § 165.801, entry 59. Instead, by this rule, the Coast Guard will create a separate temporary rule in §165.801, the first table to § 165.801, entry 67 in order to reflect the correct dates and locations for the 2016-2017 Pittsburgh Steelers' football season fireworks display events. This change is needed to accommodate the change in date and location of Pittsburgh Steelers Fireworks. No other portion of the §165.801, the first table to § 165.801 or other provisions in §165.801 are affected by this regulation.

#### **IV. Discussion of the Rule**

The Coast Guard is temporarily suspending the regulation listed in 33 CFR 165.801, the first table to § 165.801, entry 59 and adding temporary regulation in Table to §165.801, entry 67 in order to reflect the correct dates and locations for this year's events. This change is needed to accommodate the change in date and location of Pittsburgh Steelers Fireworks. No other portion of the first table to §165.801 or other provisions in §165.801 shall be affected by this regulation. Entry 59 establishes the safety zone on Sunday, Monday, or Thursday from September through January at Ohio River, Mile 0.3-Allegheny River, Mile 0.2 (Pennsylvania).

This regulation temporarily changes the enforcement period from September through January to August through February, and the location from Ohio River, Mile 0.3-Allegheny River, Mile 0.2 (Pennsylvania) to Allegheny River mile 0.0-0.25, Ohio River mile 0.0-0.1, Monongahela River mile 0.0-0.1. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based firework display. No vessel or person will be permitted to

enter the safety zone without obtaining permission from the COTP or a designated representative.

In addition to notice in the Federal Register, the maritime community will be provided advance notification via the Local Notice to Mariners, and marine information broadcasts.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts a small portion of the waterway for a limited duration of less than two hours in the evening. Vessel traffic will be informed about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue broadcast notices to mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit the zone.

## B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than two hours that will prohibit entry to the Allegheny River mile 0.0-0.25, Ohio River mile 0.0-0.1, Monongahela River mile 0.0-0.1 during the barge-based firework event. It is categorically excluded from further review under paragraph 34 (g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities



The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.801, in the first table:

a. From [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through February 28, 2017, suspend entry “59”.

b. From [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through February 28, 2017, add entry “67”.

The addition reads as follows:

§ 165.801 Annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones.

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<b>Date</b>	<b>Sponsor/name</b>	<b>Location</b>	<b>Safety zone</b>
*	**	**	**

67. Sunday, Monday or Thursday from August through February	Pittsburgh Steelers /Pittsburgh Steelers Fireworks	Pittsburgh, PA	Allegheny River mile 0.0-0.25, Ohio River mile 0.0-0.3 and Monongahela River mile 0.0-0.1.
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L. McClain, Jr.,  
Commander, U.S. Coast Guard,  
Captain of the Port Pittsburgh.

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